

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

MINNESOTA STATE CURB & GUTTER, A  
DIVISION OF AVR, INC.<sup>1</sup>

Employer

And

CEMENT MASONS, PLASTERERS AND SHOP  
HANDS LOCAL NO. 633 OF MINNESOTA, NORTH  
DAKOTA AND NW WISCONSIN<sup>2</sup>

Petitioner

Case 18-RC-17058

**DECISION AND DIRECTION OF ELECTION**

Petitioner seeks an election in a unit of the Employer's journeymen and apprentice cement masons employed out of the Employer's 14698 Galaxie Avenue, Apple Valley, Minnesota facility. Both parties agree on the unit description as set forth below. The only issue is whether a mail-ballot election is appropriate. The Employer contends that only an on-site election is proper. The Petitioner seeks an election only by mail-ballot. As the method of election is not a proper subject for litigation, but rather is better left to the discretion of the undersigned, it is unnecessary to resolve this issue at this time. (Cf. Halliburton Services, 265 NLRB 1154 (1982).)

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Petitioner's name appears as amended at the hearing.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act:

All full-time and regular part-time journeymen and apprentice cement masons employed by the Employer out of its 14698 Galaxie Avenue, Apple Valley, Minnesota facility; excluding office clerical employees, professional employees, laborers, carpenters, bricklayers, operating engineers, truck drivers, mechanics, and plant operators, and all other employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

#### **DIRECTION OF ELECTION**<sup>4</sup>

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or

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<sup>3</sup> The Employer, Minnesota State Curb & Gutter, a Division of AVR, Inc., is a Minnesota corporation engaged in cement finishing and construction. During the past 12 months, a representative period, the Employer's gross revenues exceed \$1,000,000, and the Employer purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Minnesota.

<sup>4</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 2, 2002**.

temporarily laid off. Also eligible to vote are all employees in the unit (1) who have been employed for at least two periods of employment cumulatively amounting to 30 days or more in the 12-month period immediately preceding the eligibility date, *or* (2) who have had some employment in the 12-month period and have had at least two periods of employment cumulatively amounting to 45 days or more in the 24-month period immediately preceding the eligibility date, *or* (3) who have had one period of employment of 90 days or more in the 12-month period immediately preceding the eligibility date.<sup>5</sup> Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>6</sup>

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<sup>5</sup> Daniels Construction Company, Inc., 133 NLRB 264 (19767), as modified by S.K. Whitley & Co., 304 NLRB 776 (1991).

<sup>6</sup> To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, Suite 790, Towle Building, 330 Second Avenue South, Minneapolis, MN 55401-2221, on or before close of business **November 25, 2002**. No extension of time to

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Cement Masons, Plasterers and Shop Hands Local No. 633 of Minnesota, North Dakota and NW Wisconsin.

Signed at Minneapolis, Minnesota, this 18<sup>th</sup> day of November, 2002.

/s/ Ronald M. Sharp

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Ronald M. Sharp, Regional Director  
Eighteenth Region  
National Labor Relations Board  
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file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.